

AMENDED IN ASSEMBLY APRIL 30, 2003

AMENDED IN ASSEMBLY APRIL 2, 2003

CALIFORNIA LEGISLATURE—2003–04 REGULAR SESSION

## ASSEMBLY BILL

No. 1229

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**Introduced by Assembly Member Simitian**  
**(Coauthors: Assembly Members Correa and Diaz), Diaz, Laird,**  
**and Jackson)**  
(Coauthor: Senator Vasconcellos)

February 21, 2003

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An act to add Section 12940.5 to the Government Code, relating to sexual harassment.

### LEGISLATIVE COUNSEL'S DIGEST

AB 1229, as amended, Simitian. Sexual harassment.

Existing law prohibits discrimination and harassment based on sex.

This bill would ~~declare the Legislature's intent that harassment based on the preferential treatment of a paramour may constitute a hostile work environment, and~~ provide that an employer who grants an opportunity or benefit to an employee because that employee submits to the employer's sexual advances or requests for sexual favors is liable for unlawful sex discrimination against other persons who were qualified for, but denied that employment opportunity or benefit, and therefore, would reject the interpretation given to existing law by the California Court of Appeal in *Mackey v. Department of Corrections*, et al.

Vote: majority. Appropriation: no. Fiscal committee: yes.  
State-mandated local program: no.

*The people of the State of California do enact as follows:*

SECTION 1. Section 12940.5 is added to the Government Code, to read:

12940.5. ~~(a) The Legislature hereby reaffirms and declares its intent that harassment in an employment setting based on preferential treatment of a paramour may constitute a hostile work environment. If an employer grants an employment opportunity or benefit to an employee because he or she submits to the employer's sexual advances or requests for sexual favors, the employer may be held liable for unlawful sex discrimination against other persons who were qualified for, but denied that employment opportunity or benefit.~~

SEC. 2. It is the intent of the Legislature in enacting this ~~section~~ act to construe and clarify the meaning and effect of existing law and to reject the interpretation given to the law by the opinion of the California Court of Appeal in Mackey v. Department of Corrections, et al. (2003) 105 Cal.App.4th 945.

~~(b) For purposes of this article, "harassment" includes preferential treatment by an employer or supervisor of an employee who submits or consents to sexual advances or other conduct of a sexual nature when the preferential treatment is objectively and subjectively sufficient to alter the conditions of the workplace.~~